

The French “Law for the Modernisation of the Economy” (LME): What’s new for foreign investors?

By Frédéric Ichay and Marie Schocher, Avocats à la Cour
Ichay & Mullenex Avocats

October 24, 2008

The Law of January 3, 1994 created the *Société par Actions Simplifiée* which is a more flexible type of a *Société Anonyme* (public limited liability company). Since then, the SAS has been widely used by both French and foreign investors. With the LME, the French legislator tried to improve the use of the SAS, by simplifying some requirements (minimum capital, need for statutory auditors and contribution of services).

What are the new perspectives opened by the LME?

The LME, adopted by the French legislator on August 4, 2008, has a very wide scope and includes a multiplicity of issues, such as, amongst others, tax issues, trading and consumption matters, optic fibre and even changes pertaining to the opening of new supermarkets. Despite the fact that the LME is a rad-bag of a law, a section of the text is dedicated to corporate matters in order to simplify the operation for small and medium sized-business.

Insofar as the SAS is concerned, the French legislator aimed at facilitating the incorporation of such structure. In particular, the following provisions should come into force on January 1, 2009:

- **Current minimum capital requirement: € 37,000.**

From January 1, 2009, the share capital of a SAS will be freely determined in the by-laws of the company. Therefore, the minimum authorised and paid up capital will be € 1.

In particular, this will be useful for foreign small or medium companies that envisage investing in France with limited financial resources, while having access to a flexible type of legal entity.

Nevertheless, it should be noted that any contemplated commercial development in France would, in any event, require some cash investment.

- **The appointment of statutory auditors will not be compulsory anymore, under specific conditions.** Indeed, the shareholders of a SAS will have to appoint at least one statutory auditor only if the company is part of a group of companies or only if the company meets, for a given fiscal year, two thresholds amongst the three following thresholds :

- amount of the turnover (VAT excluded);
- balance sheet level; and
- average number of employees.

The amounts of such thresholds have not been published yet by the French legislator.

This provision will certainly open wider the access to an SAS for small or medium-sized companies.

- Contributions in cash or in kind are the sole contributions possible to a public limited company incorporated in France. **The LME offers a new possibility to the shareholders of a SAS: the “contribution of services” (*apport en industrie*).**

In addition to contributions in cash or in kind, shareholders of an SAS may now “bring” to the company their experience, knowledge or specific skills and will, in return, receive “non-transferable” shares in that respect.

In conclusion, the general trend of corporate law in France is moving toward more flexibility and tends to be increasingly investors oriented. Nevertheless, deregulation should always be addressed very carefully when it comes to financial solvability (minimum paid-up capital) and control (statutory auditors) of companies. Hence, legal and financial counsels will certainly have, in the coming years, a greater role in ensuring the financial and legal rationale of their future clients’ corporate structuring.